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RUEAWJA/DEPT OF JUSTICE WASHDC IMMEDIATE
RUEHC/SECSTATE WASHDC IMMEDIATE 6335
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE IMMEDIATE
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C O N F I D E N T I A L SECTION 01 OF 04 BERLIN 003456

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E.O. 12958: DECL: 12/08/2016
TAGS: [PTER](#) [PREL](#) [KJUS](#) [KHLS](#) [GM](#)
SUBJECT: SCENESETTER FOR THE U.S.-GERMAN WORKING GROUP ON
CT INFO SHARING

REF: A. BERLIN 1995
[B. BERLIN 2795](#)
[C. BERLIN 2577](#)
[D. BERLIN 2303](#)
[E. BERLIN 3075](#)
[F. BERLIN 3173](#)
[G. BERLIN 3435](#)

Classified By: DCM John M. Koenig for Reasons 1.4 (b) and (d)

[1](#)1. (C) Summary. The December 12 inaugural meeting of the U.S.-German Working Group to share counterterrorism information is an opportunity to achieve significant progress. German officials have indicated they would be prepared to share their "Gefaeerderliste" (list of those who pose a threat) and fingerprint data -- information which agencies here have tried to obtain until now without success. Germany may also be prepared to engage in HSPD-6 style terrorist watch list information exchange, on a hit/no hit basis. Germany envisions sharing with the U.S. along the lines of its Pruem treaties with its EU neighbors. Vital for the U.S. delegation to bear in mind are the full breadth of U.S. wishes, priorities among them, and creative ways to implement them, including via different German agencies. We also need to gauge / bear in mind German priorities and their legal restraints on data-sharing. End Summary.

BACKGROUND

[1](#)2. (C) German indsets moved our way in part because of the November 2005 transition to the Merkel-led Grand Coalition government, the summer 2006 foiled German train bombings, and the British airplane plot. Our understanding is that the UK plot had a deep effect on German leaders when they learned that international data sharing -- specifically with the U.S. -- had contributed materially to preventing a catastrophe. The Merkel government, and Interior Minister Wolfgang Schaueble in particular, have moved to enhance German counterterrorism capabilities through a number of domestic initiatives, such as the creation of a database combining terrorist data from federal and state as well as law enforcement and security agencies (the latter point particularly delicate in light of Germany's history). The 2006 Additional Counterterrorism Measures Law (ref A), which streamlines German agencies access to telephone, travel, and financial data, is another landmark. Germany is deepening counterterrorism cooperation via the Pruem Agreement with its closest international partners -- its fellow EU member states. Finland announced in early December that it may be

the ninth EU country to sign on to this convention that, among other things, enables instantaneous access to DNA and fingerprint data in other participating states. As Germany tightened its cooperation with its neighbors, USG officials began pointing out that the globalization of the terrorist threat and the volume of transatlantic travel and trade argued for closer U.S.-German counterterrorism and counter-crime cooperation along the lines that Germany established under Pruem.

13. (C) Interior Minister Schaeuble took up the U.S. proposal in his meetings with Attorney General Gonzales and DHS Secretary Chertoff in Washington in September (ref B).

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Specifically, he proposed establishing a bilateral Working Group to review the full range of options and priorities in view of the fact that the United States, as a non-EU member state, would not be able to adhere to some of the EU-specific provisions of Pruem. The minister's visit came after other senior level engagement, including the September visits to Berlin of State Counterterrorism Coordinator Crumpton (ref C) and FBI Director Mueller (ref D). Subsequent senior level visits also underscored the USG interest in this project, including that of Attorney General Gonzales (ref E) and DHS Assistant Secretary Baker (ref F).

WHY PRUEM?

14. (C) Former German Interior Minister Otto Schily conceived the Pruem Agreement when unspecified EU member states stymied his efforts to boost EU-wide law enforcement cooperation. Undaunted, Schily signed the agreement with his willing neighbors -- the Benelux countries and Austria. His goal was

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to establish a de facto high standard which other EU member states would eventually feel compelled to join. France, Spain, and Italy are now on board as well. During its 2007 EU Presidency, Germany intends to seek inclusion of all EU member states. The draft German/Portuguese/Slovenian 18-month EU Presidency program also mentions this goal -- a sign of German determination and will to persevere.

WHAT IS PRUEM?

15. (C) Pruem provides a framework for much of the cooperation that USG agencies have sought to establish with Germany. Articles two through seven discuss the opening of national DNA databases to automated queries from other countries via a national contact point. Articles eight through eleven discuss similar procedures for national fingerprint databases, a priority for USG agencies. Article 12 enables automated access to other countries' vehicle registration databases. Article 16 is the provision we believe addresses most closely the biographic data sharing the U.S. seeks under HSPD-6, although admittedly not in great detail. Articles 17 through 19 address Air Marshals and would naturally need to be seen in view of existing U.S.-German arrangements. Articles 20 through 22 concern documentation advisers to combat illegal migration. We note that DHS already has arrangements to share expertise on travel documents with German officials, and is considering more. Article 23 addresses repatriation. Articles 24 through 27 mainly discuss cross border law enforcement assistance which seems more relevant to the countries with which Germany shares borders, although we note that Article 27 (2) discusses a wide range of possible information that might be shared, including notably "the identity of telephone subscribers" and "data from police databases" in Article 27 (2) paras (5) and (8). Pruem contains many other provisions, among them data

protection (see below). While not a simple blueprint for U.S.-German cooperation, Pruem shows how far Germany has gone with its neighbors.

STRATEGY

¶6. (C) The letter from DHS A/S Baker to MOI DG Krause outlines key U.S. priorities. We would like to add some specificity. During the November visit of the HSPD-6 delegation (ref G) Interior Ministry Office Director for Police Information Systems, the BKA Law, and Data Privacy in Security Affairs Andreas Schultz said Germany would be prepared to share its "Gefaerderliste" or "List of People Posing a Threat." (Note: the BKA is the Federal Office of Criminal Investigation. End Note.) U.S. agencies have sought access to this list for years. Schultz also mentioned the existence of the "Einreiseverbotliste" or "List of People Forbidden from Entry." He said it contained not only terrorists but also those who Germany will not admit for reasons such as visa fraud. Germany might be prepared to share the terrorist / criminal portion of this list. The Federal Police maintains this list; we have asked that a representative from the Federal Police take part in the meetings December 12.

¶7. (C) The U.S. delegation should assess which among these U.S. priorities Germany is prepared to implement and how simple the implementation can be. It may be that for the sake of progress, we should pursue an agreement on less contentious issues and leave those issues that present Germany with the most difficulty for a subsequent round of negotiations. Schultz and others have said that any agreement will require amending German legislation and therefore the consent of the Bundestag; the U.S. delegation should explore whether there are indeed ways to enable the start of information exchange without unnecessary delay. As the Terrorist Screening Center (TSC) is aware, we initiated information sharing during the 2006 Soccer World Cup by signing an agency-level, as opposed to Ministerial-level, agreement without additional legal formalities. This is one option. That said, it may be that whatever we seek from Germany requires Bundestag consent. We should then bear in mind all the more the future precedent a U.S.-German bilateral agreement would set for the other members of Pruem and consider the text's possible future application to other

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EU member states. This scenario might argue for a more complete agreement instead of focusing solely on less contentious issues.

¶8. (C) Also important will be a consideration of German priorities. The U.S. delegation should be ready not only to discuss how U.S. initiatives would benefit Germany, but to hear and consider German suggestions. The Minister has tasked Schultz with establishing the Working Group and delivering a result -- presumably the initiative has to contain benefits to both sides. Schultz has not divulged specific German priorities, but we know that their guideline will be to seek from us the access to the kinds of information they receive under Pruem.

DATA PROTECTION

¶9. (SBU) The U.S. delegation should understand German data protection laws in order to understand better the limits to German flexibility. The Federal Data Protection Act, state-level data protection acts, various court precedents, and numerous sector-specific data protection regulations govern data protection in Germany. Some German data protection provisions predate EU data protection directives and helped shape EU policy; conversely, more recent EU

decision have affected German rules. German data protection law generally protects the individual from unjustified collection, storage, and transfer of his/her personal data. In the area of law enforcement, specific laws -- such as the BKA law for which Schultz is responsible -- form the legal basis for collecting and processing personal data. There are also the Federal Criminal Procedure Code, laws governing the state police agencies, and laws governing the security agencies. The German Federal Constitutional Court has determined there is a fundamental right to "informational self-determination," but there is not complete clarity on the limits of this right because the courts have also weighed this right against the rights of the government to carry out its responsibilities.

¶10. (SBU) A key principle is that personal data may only be processed for the purpose for which it was collected. Government agencies may only collect data if it is necessary to fulfilling their responsibilities. Moreover, data collection has to be transparent. The individual has certain rights, e.g., to agree that the data be collected. In the area of law enforcement, the individual has the right to request information from the collecting agency and to request deletion of their data. As in other EU member states the independent Federal Data Protection Commissioner supervises compliance of federal agencies with data protection rules.

DATA PROTECTION AND PRUEM

¶11. (C) German data protection rules may limit both the data Germany can receive (they may have no legal grounds to receive or store it) and the data they can give (they may have no legal grounds to provide it). The greater the specificity to the data inquiry, the easier it may be to exchange data. This is the principle behind the Pruem hit / not hit system. Germany and (e.g.) Belgium do not simply swap lists of terrorists and data bases of fingerprints -- German officials tell us data protection laws in both countries would ban it. Instead Pruem lets them query each other's records. If there is a hit, it indicates information or investigations on both sides of the border. So the hit also immediately produces the grounds for the subsequent sharing of specific information: furtherance of law enforcement obligations to carry out ongoing investigations on both sides of the border.

¶12. (C) The possible obstacle of German data protection rules can be overcome in other ways. Again, as the TSC can attest, during the 2006 World Cup information sharing, the BKA was concerned that German courts might force them to reveal the source of possible U.S. tearline background information provided subsequent to a hit. German courts, however, do not have the same jurisdiction over German security services such as the Office for the Protection of the Constitution or BfV -- the domestic security service. Therefore, during the World Cup, the two sides decided to share any tearline

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background information via the BfV. Using the BfV may again be a creative way to overcome obstacles to reaching a U.S.-German Pruem style agreement.

PUBLIC CLIMATE

¶13. (SBU) The U.S. delegation is aware of the level of skepticism in many parts of Europe toward certain U.S. counterterrorism policies. As to Germany specifically, we note that the new EU Parliament report on alleged renditions states that more flights went to and from Germany than any other EU country. A Bundestag Investigation Committee, established at the urging of the opposition, is looking into allegations of German "collusion" in the Iraq war, despite

its public stance against it. They have also agreed to look into allegations that Murat Kurnaz, a Turkish national -- but longtime German resident -- recently released from Guantanamo, may have been questioned by German officials while in detention. The Committee took recent testimony from senior MOI and other officials about what they knew and when concerning the alleged rendition of Lebanese/German dual-national Khaled al Masri. The German media gives considerable coverage to these allegations. In recent days the German press alleged that EUCOM in Stuttgart was the site from which the U.S. "organized renditions."

¶14. (C) As we describe above, senior German leaders are committed to pursue a Pruem-style agreement with us, but some of their staff, who will negotiate with us, are more circumspect. They know that the Investigation Committee has demanded documents and that officials have had to testify to describe their possibly controversial actions, some of which touch on the U.S. The U.S. delegation should therefore stress its desire to be transparent and fair in the negotiations, the goal of which is to share specific information when warranted to protect our citizens from harm.
TIMKEN JR